

SENATE BILL REPORT

SB 6120

As Reported by Senate Committee On:
Environment, January 20, 2012

Title: An act relating to children's safe products.

Brief Description: Concerning children's safe products.

Sponsors: Senators Nelson, Swecker, Harper, Hargrove, Kohl-Welles, Fraser, Kastama, Pridemore, Rolfes, Frockt, Ranker, Regala, Shin, Tom, Kline, Chase, Keiser and Conway.

Brief History:

Committee Activity: Environment: 1/17/12, 1/20/12 [DPS-WM, DNP].

SENATE COMMITTEE ON ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 6120 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nelson, Chair; Rolfes, Vice Chair; Chase, Fraser and Pridemore.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Minority Member; Honeyford, Morton and Sheldon.

Staff: Jan Odano (786-7486)

Background: In 2008 the Legislature passed E2SHB 2647, The Children's Safe Products Act (CSPA). In part, CSPA requires the Department of Ecology (DOE) to identify chemicals of high concern for children using certain criteria. CSPA also requires manufacturers of children's products containing identified chemicals of high concern to annually report product information to DOE. DOE is authorized to adopt rules to implement, administer and enforce the act. California, Maine, and Minnesota also have passed legislation regarding chemicals of concern in children's products.

DOE finalized and adopted rules in July 2011. The rules establish a list of chemicals of high concern for children, provide notification requirements for manufacturers, and set enforcement actions. The reporting requirements are phased-in by manufacturer size and type of children's product. The largest manufacturers must begin reporting by August 2012 on children's products intended for feeding or sucking as well as lotions, shampoos, and

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creams. The manufacturer's notice must be filed annually and provide information about chemicals of high concern for children that are intentionally added to the product.

The chemicals TCEP (Tris(2-chloroethyl) phosphate) and TDCP (Tris(1-chloro-2-propyl) phosphate), known collectively as TRIS, are added to plastics, foams, and textiles as flame retardants. TRIS is found in children's products such as car seats, baby changing pads, and baby carriers. TRIS is used as a replacement for certain PBDE (Polybrominated Diphenyl Ether) flame retardants that have been banned or voluntarily phased out of use. Beginning December 1, 2013, the state of New York will prohibit the sale of products containing TRIS intended for use by children under the age of three, such as baby products, toys, car seats, nursing pillows, crib mattresses and strollers.

Summary of Bill (Recommended Substitute): The manufacture, distribution, and sale of children's products containing TRIS in amounts greater than 50 parts per million is prohibited beginning July 1, 2014.

Manufacturers required to complete an alternatives assessment must identify potential alternatives for chemicals of high concern for children. The alternative assessment must address several elements for the chemical of high concern and potential alternatives, including:

- an assessment of whether the alternative has the potential to cause fetal or child developmental impacts, cause cancer or genetic damage, damage the nervous or immune system;
- information on the degree of toxicity, potential routes of exposure, performance and functionality; and
- opportunities for reformulation or redesign.

In addition, an alternatives assessment must provide a comparison of the assessment elements for alternatives and the chemical of high concern for children, and it must include a description of the criteria and assumptions used.

Beginning August 31, 2013, a manufacturer which has provided notice that its children's product contains formaldehyde must submit an alternatives assessment within one year of submitting notice to DOE. By January 1, 2014, manufacturers of children's products containing TRIS must submit an alternatives assessment to DOE. Beginning August 31, 2014, a manufacturer which has provided notice that its children's product contains antimony or antimony compounds or Bisphenol-A must submit an alternatives assessment within one year of submitting notice to DOE. Manufacturers with annual gross sales of less than \$5 million based on their most recent tax filings are exempt from completing alternatives assessments for TRIS, formaldehyde, and antimony.

DOE is required to provide technical assistance to any requesting manufacturers required to conduct an alternatives assessment.

By July 1, 2015, DOE, in consultation with the Department of Health, must provide a report to the Legislature summarizing and evaluating manufacturers reports and alternatives assessments. The report must include a summary of manufacturers' information on the use of chemicals of high concern for children, evidence of children's exposure to such chemicals

and results from the alternatives assessments. The report must also include any safer alternatives to chemicals of high concern for children as well as recommendations for legislative action to protect children's health and to improve the alternatives assessment process.

Beginning July 1, 2017, DOE may require manufacturers of children's products containing chemicals of high concern for children to submit alternatives assessments for no more than two chemicals of high concern for children per year. DOE must allow the manufacturer at least one year to submit an alternatives assessment.

EFFECT OF CHANGES MADE BY ENVIRONMENT COMMITTEE (Recommended Substitute): Grammatical and technical changes are made. The timeframe for when DOE may require alternatives assessments is clarified.

Appropriation: None.

Fiscal Note: Requested on January 13, 2012.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The current approach to chemicals affecting the environment, public health and safety is fundamentally flawed. The system errs on the side of commerce rather than safety. There is no mechanism to address known toxic chemicals. This bill moves towards such system. It is critical to find safer alternatives. There is research showing high levels of TRIS in children's products. There are studies showing the impacts of some of the chemicals such as: PBDEs can cause low-birth weight babies; and Bisphenol-A has a linear relationship to behavioral issues. TRIS is a carcinogen. This bill will get TRIS out of kids products. There are several good alternatives for flame retardants. Early intervention can help a child reach their full potential. The adverse effects of chemicals such as TRIS impacts kids. Parents shouldn't have to be chemistry professors to determine safe products for their children.

CON: The bill ignores the rule-making activities undertaken by DOE. We should wait until the rule is fully implemented and rule requirements are met before there is an expansion of activities. The first reports required under the rule are not due until August 2012. There needs to be clarity on Bisphenol-A and the prohibitions that were recently passed on the use of this chemical. A definition of credible science is needed in the bill. There needs to be a federal solution that is a risk-based approach to these chemicals. There needs to be a method for prioritization of chemicals so that DOE will not be inundated with unnecessary data. The system for risk evaluation should be one that identifies the hazards, determines the products containing the hazards, and then evaluates the use of the products and by whom. The bill penalizes entrepreneurship by allowing the exchange of confidential business information, which goes against the fundamental provisions of trade secrets and could expose industry participants to liability. The toy industry is already highly regulated with manufacturers required to comply with several federal laws and the American Society for Testing and Materials safety specification on toys.

Persons Testifying: PRO: Senator Nelson, prime sponsor; Bernie Steckler, Lee Anne Beres, Earth Ministry; Erika Schreder, WA Toxics Coalition; Barry Lawsen, MD, Academy of Pediatrics; Karen Bowman, WA State Nurses Assn.; Erin Naumowicz, Lullaby Organics; Jessie Dye for Loretta Jancoski, Retired Dean of Seattle University, School of Theology & Ministry; Diane Bedwell, Planned Parenthood; Ted Sturdevant, Director, DOE; Mike Brown, WA Fire Chiefs; Elizabeth Davis, League of Women Voters of WA.

CON: Melissa Gombosky, Personal Care Products Council; Courtney Barnes, Assn. of WA Business; Holly Chisa NW Grocery Assn.; Joe Gregoric, Toy Industry Association; John Hewitt, Grocery Manufacturers Assn.; Mark Johnson, WA Retail Assn.; Mark Greenberg, American Chemistry Council.